

Rodriguez v Panic5, LLC.

2025 NY Slip Op 32867(U)

June 17, 2025

Supreme Court, Kings County

Docket Number: Index No. 520672/2020

Judge: Francois A. Rivera

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At an IAS Term, Part 52 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at Civic Center, Brooklyn, New York, on the 17th day of June 2025

HONORABLE FRANCOIS A. RIVERA

-----X
FRANCISCA JEREZ RODRIGUEZ

Plaintiff,

- against -

PANIC5, LLC., FAMILY DOLLAR STORES, INC.,
FAMILY DOLLAR, LLC, DOLLAR TREE, INC.,
FAMILY DOLLAR, FAMILY DOLLAR STORES
OF NEW YORK, INC., DOLLAR STORE, INC.

Defendants.
-----X

DECISION & ORDER

Index No.: 520672/2020

Oral Argument: 5/29/2025

Cal. No.: 34 & 35

Ms. Seq. No.: 5 & 6

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on October 20, 2024, under motion sequence number five, by Family Dollar Stores of New York, Inc. for an order pursuant to CPLR 3212 (1) granting summary judgment in its favor (also improperly sued herein as Family Dollar Stores, Inc., Dollar Tree, Inc., and Family Dollar) (hereinafter the Family Dollar defendants), dismissing plaintiff's verified complaint; and (2) dismissing all cross claims asserted against it. The motion is opposed.

- Notice of motion
- Affirmation in support
- Statement of material facts
- Affidavit in support
 - Exhibits A-F
- Affirmation in opposition by Panic5, LLC
 - Exhibit A
- Counterstatement of material facts by plaintiff
- Counterstatement of material facts by Panic5, LLC
 - Exhibits A-I
- Affirmation in reply

Recitation in accordance with CPLR 2219 (a) of the papers considered on the notice of motion filed on January 13, 2025, under motion sequence number six, by plaintiff Francisca Jerez Rodriguez for an order pursuant to CPLR 3212 granting plaintiff partial summary judgment on the issue of the liability against defendant Panic5, LLC. The motion is opposed.

- Notice of motion
- Affirmation in support
 - Exhibits 1-10
- Statement of material facts
- Affirmation in partial support by the Family Dollar defendants
 - Exhibits A-D
- Affirmation in opposition by Panic5, LLC
 - Exhibits A-G
- Affirmation in reply

BACKGROUND

On October 23, 2020, the plaintiff commenced the instant action for damages for personal injuries by filing a summons and verified complaint with the Kings County Clerk's Office (KCCO).

On November 17, 2020, the Family Dollar defendant interposed and filed a verified answer with the KCCO.

On May 5, 2022, defendant Panic5, LLC interposed and filed a verified answer and cross claim with the KCCO.

The verified complaint alleges fifty-seven allegations of fact in support of a single cause of action for damages for personal injuries. The verified complaint alleges the following salient facts. On January 12, 2020, the plaintiff tripped and fell due to a dangerous and defective condition on the sidewalk in front of 888 Jamaica Avenue. Panic5 LLC and the Family Dollar defendant are the owner of the premises located at 888 Jamaica Avenue, Brooklyn, New York. Panic5 LLC and the Family Dollar defendant were negligent in their alleged duty to keep the sidewalk in front of their

premises in a reasonably safe condition. That negligence allegedly resulted in the dangerous condition which caused the plaintiff's accident and resulting injuries.

LAW AND APPLICATION

It is well established that summary judgment may be granted only when it is clear that no triable issue of fact exists (*Alvarez v Prospect Hospital*, 68 NY2d 320, 324 [1986]). The burden is upon the moving party to make a prima facie showing that he or she is entitled to summary judgment as a matter of law by presenting evidence in admissible form demonstrating the absence of material facts (*Giuffrida v Citibank Corp.*, 100 NY2d 72, 81 [2003]). “[A] moving party must address the specific factual allegations set forth in the complaint and the bill of particulars” (*Parrilla v Sapphire*, 149 AD3d 856, 857 [2d Dept 2017], citing, *Terranova v. Finklea*, 45 A.D.3d 572 [2nd Dept. 2007]).

A failure to make that showing requires the denial of the summary judgment motion, regardless of the adequacy of the opposing papers (*Ayotte v Gervasio*, 81 NY2d 1062, 1063 [1993]). If a prima facie showing has been made, the burden shifts to the opposing party to produce evidentiary proof sufficient to establish the existence of material issues of fact (*Alvarez*, 68 NY2d at 324).

Pursuant to CPLR 3212 (b) a court will grant a motion for summary judgment upon a determination that the movant's papers justify holding, as a matter of law, that there is no defense to the cause of action or that the cause of action or defense has no merit. Further, all of the evidence must be viewed in the light most favorable to the opponent of the motion (*Boyd v Rome Realty Leasing Ltd. Partnership*, 21 AD3d 920, 921 [2d Dept 2005]).

“Generally, a contractual obligation, standing alone, will not give rise to tort liability in favor of a third party” (*Forbes v Equity One Northeast Portfolio, Inc.*, 212 AD3d 780, 781 [2d Dept 2023], citing *Espinal v Melville Snow Contrs., Inc.*, 98 NY2d 136, 140 [2002]). “However, a party that enters into a contract to render services may be said to have assumed a duty of care, and thus, be potentially liable in tort to third persons, where (1) the contracting party, in failing to exercise reasonable care in the performance of its duties, launches a force or instrument of harm, (2) the plaintiff detrimentally relies on the continued performance of the contracting party's duties, or (3) the contracting party has entirely displaced the other party's duty to maintain the premises safely” (*Forbes*, 212 AD3d at 781, quoting *Martinelli v Dublin Deck, Inc.*, 198 AD3d 635-637 [2d Dept 2021], and also citing *Espinal*, 98 NY2d at 140).

“Administrative Code of the City of New York § 7–210 (a) and (b) imposes a duty upon property owners to maintain the sidewalk adjacent to their property, and shifts tort liability to such owners for the failure to maintain the sidewalk in a reasonably safe condition, including the negligent failure to remove snow and ice” (*Kabir v Budhu*, 143 AD3d 772, 773 [2d Dept 2016]; see *Gyokchyan v. City of New York*, 106 AD3d 780, 781 [2d Dept 2013]). “However, Administrative Code of the City of New York § 7-210 does not impose strict liability upon the property owner, and the injured party has the obligation to prove the elements of negligence to demonstrate that an owner is liable” (*Kabir v Budhu*, 143 AD3d 772, 773 [2d Dept 2016]; see *Gyokchyan v City of New York*, 106 AD3d at 781; *Martinez v Khaimov*, 74 AD3d 1031, 1033 [2d Dept 2010]). The “[s]ubject landowners are not strictly liable for personal injuries resulting from incidents on abutting sidewalks because section 7-210 adopts a duty and standard of care that

accords with traditional tort principles of negligence and causation” (*Cordell v Brooklyn Union Gas Co.*, 234 AD3d 815, 817 [2d Dept 2025], quoting *Xiang Fu He v Troon Mgt., Inc.*, 34 NY3d 167, 171 [2019]).

In support of its motion the Family Dollar defendant submitted a copy of its lease with co-defendant Panic5 LLC. and an affidavit of Jason Brothers, its vice-president. Jason Brothers authenticated the lease. The lease established that Panic 5 LLC was the owner of the premises located at 888 Jamaica Avenue, Brooklyn, New York and was also the Family Dollar defendant’s landlord. The lease also established that the Family Dollar defendant’s leasehold did not extend to the sidewalk abutting the premise and that they had no contractual obligation to maintain the abutting sidewalk. Jason Brothers’ affidavit also established that they did no repairs to the sidewalk abutting their leasehold.

The Family Dollar defendant’s evidentiary submission made a prima facie showing that they owed no duty to maintain the sidewalk in front of their leasehold. It also established that they breached no duty to the plaintiff. They, therefore, made a prima facie showing of entitlement to dismissal of the verified complaint as asserted against them. The plaintiff failed to raise a triable issue of fact.

“CPLR 2214 (a) provides that a notice of motion shall specify the time and place of the hearing on the motion, the supporting papers upon which the motion is based, the relief demanded and the grounds therefor” (*Abizadeh v Abizadeh*, 159 AD3d 856, 857 [2d Dept 2018], citing *Shields v Carbone*, 99 AD3d 1100, 1102 [3d Dept 2012]).

The Family Dollar defendant did not specifically state the cross-claim that was asserted against it. It is noted that the cross-claim asserted against it by co-defendant

Panic5 LLC claimed, among other things, that the plaintiff's damages were caused by the Family Dollar defendant's breach of contract. The Family Dollar defendant simply stated that the cross-claim sounded in negligence and that they were not negligent. They did not address the claim that the plaintiff's damages were caused by their breach of contract. It is therefore denied.

“[C]ertain landowners of real property ‘abutting any sidewalk’ in the City of New York have a duty to maintain a sidewalk in a reasonably safe condition” (*Augustin v CS 87 Estates, LLC*, 217 AD3d 818, 818-819 [2d Dept 2023], quoting Administrative Code of City of N.Y. § 7-210[b]). A plaintiff moving for summary judgment on the issue of liability must demonstrate, prima facie, that the abutting property owner created the sidewalk defect or had actual or constructive notice of its existence (*see Shiu Ya Luo v Croyden Apts., Inc.*, 219 AD3d 1364, 1365 [2d Dept 2023]).

In support of the contention that Panic5 LLC had constructive notice of the defective condition of the sidewalk in front of its property the plaintiff annexed as exhibit seven a Google photograph taken on August 2, 2018. Plaintiff admitted the Google image pursuant to CPLR 4532-b.

In opposition to the motion, Panic5 LC correctly contended that the Google map image did not depict a visible or apparent defect on the sidewalk abutting their property. By providing a Google street view image that did not show the alleged defect, the plaintiff failed to demonstrate that Panic5 LLC had constructive notice of the sidewalk defect. Consequently, the plaintiff's evidentiary submission did not eliminate all triable issues of fact regarding Panic5 LLC's liability for the subject accident. Therefore, the

plaintiff's motion is denied without regard to the sufficiency of Panic5 LLC's papers in opposition (*Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

CONCLUSION

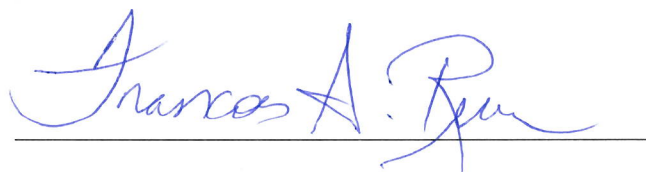
The branch of the motion by Family Dollar Stores of New York, Inc. for an order pursuant to CPLR 3212 granting summary judgment in its favor on the issue of liability and dismissing the plaintiff's verified complaint is granted.

The branch of the motion by Family Dollar Stores of New York, Inc. for an order pursuant to CPLR 3212 granting summary judgment in its favor dismissing any cross claims asserted against it is denied.

The motion by plaintiff Francisca Jerez Rodriguez for an order pursuant to CPLR 3212 granting plaintiff partial summary judgment in her favor on the issue of the liability against defendant Panic5, LLC is denied.

The foregoing constitutes the decision and order of this Court.

ENTER:



J.S.C.

HON. FRANCOISA RIVERA